

THE URBAN LAW FIRM

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

THE BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS HEALTH AND WELFARE
TRUST; THE BOARD OF TRUSTEES OF
THE CONSTRUCTION INDUSTRY AND
LABORERS JOINT PENSION TRUST;
THE BOARD OF TRUSTEES OF THE
CONSTRUCTION INDUSTRY AND
LABORERS VACATION TRUST; THE
BOARD OF TRUSTEES OF SOUTHERN
NEVADA LABORERS LOCAL 872
TRAINING TRUST,

Plaintiffs,

vs.

THOR CONSTRUCTION, INC., a Foreign
corporation,

Defendant.

CASE NO:

**COMPLAINT FOR BREACH OF
CONTRACT AND BREACH OF ERISA**

[29 U.S.C. § 185(a) and § 1132(e)]

Plaintiffs, jointly and severally, complain and allege as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this case pursuant to Section 502(e)(1) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. § 1132(e)(1), which grants the United States District Courts exclusive jurisdiction over civil actions brought by a fiduciary pursuant to Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), to redress violations or enforce the terms of ERISA or an employee benefit plan governed by ERISA. Such jurisdiction exists without respect to the amount in controversy or the citizenship of the parties, as provided in Section 502(f) of ERISA, 29 U.S.C. § 1132(f).

1 872 and Contractors Associations and the Trust Agreements establishing the Plaintiff Trust Funds.
2 The CBA names the Trust Funds as third-party beneficiaries of that agreement.

3 9. THOR is an employer whose employees perform work covered under the CBA.
4 Pursuant to the CBA, THOR agreed to abide by the Trust Agreements, which establish and govern
5 the operation of the Plaintiff Trusts.

6 10. THOR is an “employer,” as that term is defined in the CBA and related Trust
7 Agreements.

8 11. THOR is an “employer” as defined and used in Section 3(5) of ERISA, as codified
9 at 29 U.S.C. § 1002(5), and therefore, THOR is “obligated to make contributions to a multi-
10 employer plan” within the meaning of Section 515 of ERISA, as codified at 29 U.S.C. § 1145.
11 Plaintiffs allege that THOR is an “employer” engaged in “commerce” in an “industry affecting
12 commerce,” as those terms are defined and used in Section 501(1) and Section 501(3) of the LMRA,
13 as codified at 29 U.S.C. § 142(1) and § 142(3), and within the meaning and use of Section 301(a)
14 of the LMRA, 29 U.S.C. § 185(a).

15 12. Plaintiffs are informed and believe, and thereon allege, that at all times material
16 herein THOR has been a corporation organized and existing by virtue of the laws of the State of
17 Minnesota and authorized to conduct business in the State of Nevada.

18 **FIRST CLAIM FOR RELIEF**
19 **Breach of Written Collective Bargaining**
20 **Agreement and Related Trust Agreements – THOR**

21 13. Plaintiffs repeat and reallege the allegations contained in the foregoing paragraphs 1
22 through 12, inclusive, as though fully set forth herein.

23 14. At all times material to this Complaint, there was in effect a collective bargaining
24 agreement (“CBA”) between Local 872 and THOR. The CBA incorporates by reference the Trust
25 Agreements establishing the Trusts.

26 15. THOR is an employer whose employees performed work covered under the CBA
27 between THOR and Local 872. Pursuant to the CBA, THOR agreed to abide by the Trust
28 Agreements, which establish and govern the operation of the Trusts.

1 16. By the terms and provisions of the CBA, and related Trust Agreements, and at all
2 times material herein, Defendant THOR was obligated to the following:

3 16.1 Defendant THOR was obligated to prepare and submit true, complete and
4 accurate written monthly contribution reports to the Trusts on a timely basis showing i) the
5 identities of employees performing work covered by the CBA, ii) the number of hours
6 worked by or paid to these employees, iii) the rates of pay, iv) character of hours worked
7 (e.g., straight time, over-time, etc.), and v) based upon the hours worked or amounts paid to
8 employees, the proper calculation of the fringe benefit contributions, benefits and/or
9 withholdings attributable to its employees. These monthly contribution reports are due on
10 the 10th day of each successive month;

11 16.2 Defendant THOR was required to maintain adequate records of work
12 performed by and amounts paid to its employees. THOR was obligated to permit the Trusts
13 and their agents to conduct audits of THOR's payroll and related records in order to
14 determine whether or not fringe benefit contributions were properly paid pursuant to the
15 CBA and Trust Agreements;

16 16.3 Defendant THOR was obligated to properly pay fringe benefit contributions
17 to the Trusts. Benefits and/or other withholdings were to be made on a monthly basis, and
18 at specified rates for each hour worked by or paid to applicable employees; these amounts
19 are due and payable at the Trusts' administrative offices.

20 17. Since approximately February 1, 2019, the Trusts' auditors have attempted to obtain
21 Thor's compliance with an audit.

22 18. On or about March 18, 2019, Plaintiffs, through their counsel, demanded THOR
23 provide payroll and related records of THOR beginning from the time period of January 1, 2018
24 through February 28, 2019.

25 19. To date, THOR has failed and refused to provide any of the requested payroll or
26 related records.
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1 20. Due to THOR's refusal to permit an audit, the exact amount of contributions and/or
2 contract damages due and owing have not been ascertained at this time. These amounts, if any exist,
3 will be established by proof at trial herein or through dispositive motion following completion of an
4 audit. THOR's refusal to produce all requested documents is a breach of the CBA and Trust
5 Agreements.

6 21. Thor's refusal to produce documents for audit also a breach of ERISA.

7 22. Thor has failed to submit its January and February 2019 contribution reports to the
8 Trust Funds, which is also a violation of the CBA and Trust Agreements.

9 23. Pursuant to the terms of the CBA and Trust Agreements, THOR also promised that,
10 in the event of any delinquency, it would pay any legal and auditing costs in connection with such
11 delinquency, whether incurred before or after litigation commenced.

12 24. It has been necessary for the Trusts to engage The Urban Law Firm for the purpose
13 of obtaining the payroll and related records of THOR to complete the audit, collect any and all
14 amounts due, and to otherwise enforce the terms of the CBA and Trust Agreements.

15 25. Pursuant to the CBA, Trust Agreements, and 29 U.S.C. §1132(g)(2), the Trusts are
16 entitled to an award of their reasonable attorney's fees incurred to enforce the same, even if no
17 delinquency is discovered by the audit.

18 26. Pursuant to 29 U.S.C. §1132(g)(2), THOR owes to the Trusts interest, at the
19 contractual rate, on any and all unpaid contributions and liquidated damages from the dates the sums
20 were originally due to the Trusts through the date of judgment.

21 **WHEREFORE**, the Trusts pray for judgment against THOR, as follows:

22 1. For an order compelling THOR to submit to and cooperate with the audit of their
23 books, documents, and other things by the Trusts duly appointed representative;

24 2. For unpaid fringe benefit contributions if any, in amounts as proven;

25 3. For damages for breach of contract in amounts if any, as proven;

26 4. For liquidated damages in amounts if any, as proven;

27 5. For audit expenses if any, in amounts as proven;

- 1 6. For interest at the agreed upon contractual rate on all fringe benefit contributions
2 and/or damages if any, until paid in full;
- 3 7. For the Trusts' reasonable attorney's fees;
- 4 8. For the Trusts' costs of suit incurred herein; and
- 5 9. For such additional relief as this Court deems just and proper.

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7 Dated: March 29, 2019

THE URBAN LAW FIRM

8 /s/ Nathan R. Ring

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